

The Charlotte Journal.

T. J. HOLT, JR.,
EDITOR AND PROPRIETOR.
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"Perpetual Vigilance is the Price of Liberty," for "Power is always Stealing from the Many to the Few."

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Debate in the Senate.

The Senate on the 15th ult. having under consideration the motion to refer the President's Message, transmitting the Constitution of the State of California, to the Committee on Territories, to which Mr. Benton had moved an amendment to instruct the committee to report a bill for the admission of the State of California, unconnected with any other subject.

Mr. BUTLER spoke at some length, and was followed by

Mr. BADGER. I desire, sir, to state some difficulties which I feel in voting for the instructions moved by the honorable Senator from Missouri, by which the Committee on Territories is to be directed to bring in a bill for the admission of the State of California into the Union. I say difficulties, which, so they must prevent me from supporting those instructions, must also, unless they can be satisfactorily removed in my mind, prevent me, in any future stage of this proceeding, from voting for the admission of that State. What I have to state, Mr. President, has been in part referred to by the honorable Senator from South Carolina (Mr. Butler). And, although I do not think it at all necessary on this occasion to go into the discussion, as he has, of this question of slavery, in which almost every subject of discussion which comes under the consideration of the Senate either begins or ends, yet allow me to remark, that for the difficulty in which we all feel ourselves to be involved upon this great and agitating subject, which is now asking this Union from one extremity to the other—for the serious, almost awful prospect which we have before us of danger, either from actual disruption, or from the severance of those ties of mutual affection and confidence which should bind us into one truly united people—let me say, for this I am not responsible.

The honorable Senator from South Carolina (Mr. Butler) says that when this treaty was under consideration he foresaw the difficulty that would grow out of territorial acquisitions. Now, sir, if that honorable Senator, and two other gentlemen upon this floor, on either side of the chamber, foreseeing these difficulties, and seeing under the just and natural influence of that foresight, had united in the support of the amendment which I myself moved to the treaty, by which all acquisitions were to be subjected to these troubles, would never have been upon us.

Mr. BUTLER. I did not allude to the discussion or vote upon the treaty, but just before that. When the treaty was before us, the only way to get through it was to sign the treaty. We had no far enough in before that. What I wanted was to get out. [Laughter.]

Mr. BADGER. Well, Mr. President, so far as that matter is concerned, I stand clear of all responsibility. I had nothing to do with getting us into this difficulty. I had no hand to do with the admission of Texas, which resulted in the war, or with the acquisition with which the war terminated. The question upon the treaty was before the Senate. I proposed my amendment, and, with whatever power I possessed, endeavored to enforce upon the Senate that, by the acquisition of this territory, we were bringing a live brand into the Union. Gentlemen will remember it. I am sure the Senator from Mississippi (Mr. Foote) remembers it. I then said that, notwithstanding the opinions I entertained with regard to the origin of the war, believing, as I then did—believing I said it—that its origin it was unnecessary, and in its purposes unjust, I would rather consent to wage that war for ten years than to end it by the acquisition of any territory which was to produce an internal disquiet and contest through the whole extent of our country. I have no right at all to complain of any gentleman upon this floor, who entertained different opinions with regard to the war, because he voted against striking out the acquisition of territory, or because he voted for the acquisition of territory; but surely I had some reason to be surprised, when gentlemen sympathizing with me in opinion, looking forward to the present contest, realizing the necessity for such a course as would avoid it, refused at the moment the sanction of their additional votes, which, had they been given, sir, I hazard nothing in saying that the difficulty we have now to contend with would never have been upon this Union—at all events not in our day. The vote stood upon that amendment 35 to 15. Two years taken from 35 and added to the 15 would have reduced the majority voting against striking out to less than two-thirds, and so have carried the amendment. My friend from Georgia, (Mr. Berrien) did me the honor on that occasion to second and support the views, and to adopt in substance the argument I had offered, as his first reason for not being able to vote for the ratification of the treaty with this acquisition of territory.

I have no disposition to refer to matters of that kind, or to dwell upon them now; and I therefore proceed, as I intended when I rose, to state the objections which I feel—and strong objections they are, sir—to the admission of the State of California into the Union at this time and under present circumstances, and which must constrain me to vote against the instructions moved by the honorable Senator from Missouri, (Mr. Benton.)

In the first place, sir, it cannot be denied that this application comes before us under circumstances unprecedented in the history of this country. Other Territories, it is true, have first moved in the matter of their admission into the Union; and, without being authorized by a previous act of Congress, have formed a constitution, and applied for such ad-

mission. But the circumstances were altogether different in many respects. To take a single example—the State of Michigan. That State belonged to a Territory which had a right to admission. It formed a portion of territory which became the property of the United States upon the express condition that it should be admitted into this Union. In the next place, that was an organized Territory, and had a Territorial Government; and that, in my view, is a matter of vast importance in this question.

What is a Territorial Government? What is any Government? It is an organization of an otherwise unorganized population into a political community. It is that which makes of such a population an organized body, enabling it to act as one whole, and bringing its several individual members, before an informed mass, into one political association, State, or body politic. It ascertains what persons among that people represent and shall have a right to speak the voice of the whole. Merely being upon a territory gives not necessarily a right to be consulted in the disposition to be made affecting the destinies of the population. The fundamental law of every country, however adopted, settles in whom the power to represent the community shall reside—who shall speak the voice of the community, and say that this State, or this political association, will that such and such things shall be done, by collecting and declaring, in due form, the public sentiment of the whole.

Now, sir, every Territorial Government established by Congress emanates from the sovereign power, and receives an authority over the Territory. That sovereign power has a right to fix laws for its government, has a right to prescribe the form and manner, and the only form and manner, in which it shall be recognized as any other than a mere mass of human beings together. By this form of government, proceeding from this sovereignty, is first defined who has a right to speak the voice of the Territory; what portion of the inhabitants shall have the elective franchise, shall choose representatives, who, when chosen by that portion, represent the whole community and speak its voice. In California we have nothing of this. Who chose the representatives? Whence did those who chose them derive the power to authorize those representatives to speak the voice of the people of California as such? Why, sir, without an act of Congress authorizing it, I can conceive of but one way in which such a form can be given to the inhabitants of the Territory, and that is by an act of revolution, in which, throwing off the allegiance of their sovereign, the United States, they think proper to meet together, in their original and primal character of human beings, and say that they will be an organized body with such a form as they think proper. But the present proceeding is not of that character. The very movement shows that they were throwing themselves upon no such right. But they could have, having formed a constitution which they say embodies the public will of California, and ask that as a State, they may be admitted into this Union.

Now, sir, the business of my life as a lawyer has inclined me to respect and follow precedents, and I always feel regret when, either needlessly or for even a slight cause, it becomes necessary in any particular instance to depart from what has been the established usage of the nation. I think that it is to be regretted that the Congress of the United States should ever have departed from the safe position that in such matters territorial management should follow and not lead the movement of Congress; and, under any pressure hereof of circumstances, should have yielded their sanction to an act by which a Territory assumed to itself, without their previous warrant or invitation, to form itself into a sovereign State. But, be that as it may, I feel a strong repugnance to go still further to introduce a new example, and say that, not only without the previous sanction of Congress for such a proceeding, but without the previous authority from Congress for forming the inhabitants of any particular district into a territorial community, for any purpose of government whatever, they may voluntarily associate themselves into a political State, adopt whatever rules in their organization they may think proper, and then apply to us to recognize them as an existing political community—a State—and, as such, receive them into this Union.

This, Mr. President, is the first difficulty I have. There is another that no gentleman has yet alluded to. When this Mexican treaty was submitted to the consideration of the Senate, it contained an article—the ninth article—providing for the admission of these Territories into the Union as States as soon as by the form of the constitution of the United States, that object could be accomplished. It was, in other words, an exact, or nearly exact, transcript of the provisions made in the treaties by which we acquired Louisiana and Florida. There has scarcely been an instance, I imagine, where there was any difference at all, in which the Senate was so nearly unanimous against adopting any such provision. Allow me, in order that the matter may be understood, to call attention to the original article, and to the substitute adopted by the Senate.

The words of the original article, so far as relates to this matter, are these:

"The Mexicans who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and admitted, as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights of citizens of the United States."

The amendment made by the Senate is in these words:

"Who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted, at the proper time, (to be judged of by the Congress of the United States,) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution."

Now, what was the meaning of this amendment? I am very well aware that a certain document, which excited some attention here, called the Protocol, informed some Mexican functionaries that, in truth, the Senate of the United States meant nothing by it; that they had some particular chance of phraseology, some preference for their own mode of expression; but as to the notion that they intended to make any essential alteration in the article, that was all a mistake; that, so far as that was concerned, they were not in earnest; and that the words inserted by the Senate are to have the same meaning as those words that had been stricken out of the original article.

Mr. FOOTE. I would remind the Senator that no such words were used by the commissioners; and he surely would not reflect upon them—one of them is dead, the other absent.

Mr. BADGER. I am aware that no such expressions were used by them. I am not stating or undertaking to state what they said, but the inevitable result of what was said. However, I mean not to cast any reflection upon either of the gentlemen—none at all; I merely wanted to state what would be the result of holding the two provisions identical in meaning. But, independently of that, the alteration was a real and substantial one, and was so understood by the Senate. The idea that the people of these Territories should be admitted into the Union with all the rapidity consistent with constitutional forms, was shocking to the minds of Senators. It was so stated on this floor; and while the Senate was voting that some future time such admission might take place, there was a decided repugnance to tying up the unfettered judgment and discretion of Congress.

I have said that this amendment was made with remarkable unanimity. When the vote was taken, there were 40 Senators present, and the amendment received a vote of 44 out of the 49; and, sir, I was one of those who voted against even this amendment; for I, as the honorable Senator from Mississippi (Mr. Foote) remembers well, and other gentlemen here, was opposed to any stipulations which might be presumed to imply even an imperfect obligation to admit at any time. I do not know how the four gentlemen were influenced who voted upon this question with me. The real sense of the Senate then was 45 to 4 against immediate admission. The four gentlemen who voted with me were Messrs. Baldwin, Corwin, Hale and Webster. Now, what are we to understand as the fair interpretation of this amended article? There is no provision that these Territories shall be admitted as soon as the form of the constitution will permit, or when they shall attain a certain population. There is nothing resembling the provision contained in the cession of the Northwestern Territory by Virginia to the United States, or in the treaties by which we acquired Florida and Louisiana—nothing at all. They are to be admitted at a proper time—to be judged of by whom? By the Congress of the United States. Now, sir, it seems to me, the force and effect, the purport and design of that is, that Congress was first to move in this business; that there should be some material change or condition of circumstances in the future, to be first judged of by Congress, previous to a movement for admission. I know that, if we admit this State into the Union now, Congress will have judged of the propriety of it. No doubt about that. But that article contemplated, I think, more than this—a prior, not a subsequent approval; that we should lead, not follow. And if, without a territorial government, without any treaty provision which entitles them to admission, without any right in them, perfect or imperfect, to ask admission, the act which has been done should obtain our ratification, and the people of California be received into the Union, we shall, I think, abandon too much of the authority and control intended to be reserved to Congress by this amended article.

These are some of the difficulties that, I confess, meet me at the threshold. I admit that in my mind, there are none of them also lately insuperable. Show me that the great interests of this country can be served; show me that the angry feelings agitating different

portions of it against the other can be composed and quieted; show me how the bonds of attachment and confidence among the several portions of this great people, now broken or weakened, can be reunited and strengthened; show me how this practical advantage can ensue from admitting California, and, as I love this Union, as I look to its preservation with anxious jealousy, and would any with General Jackson that it must be preserved, every previous usage, every formal difficulty, every minor consideration will be sacrificed, and give way under the high demand of that duty which I owe both to the constituents I represent and the great Union of which they form a member. *Salus populi* will then be with me *suprema lex*.

I use it to myself, Mr. President, to say that I have cautiously avoided alluding to anything connected with the formation of this California constitution, except what was necessary to explain the objections I feel and have stated to the Senate. And I am sorry my friend from South Carolina (Mr. Butler) thought it necessary, in urging, strongly as he did, his objections to that measure, to cast some reflection—for so I think he must have been understood—upon the President of the United States in relation to the formation of this constitution. Entertaining the opinions I do, and having endeavored to express them frankly and fully to the Senate, it is proper and just to say, I feel satisfied that high incandescence and noble gentlemen has done nothing in regard to this transaction but what springs from the most patriotic motives; that he has used no power, no influence of this Government, to stir or control the opinions, or direct the judgment of the people of California, and made no suggestions even to them as to the mode or form in which they should establish the constitution under which they desire to live. He has done nothing—and I confess that I cannot see the impropriety of that—but to intimate to the people his opinion that it would be proper, if they desired admission into this Union, to form a constitution and ask admission. I differ from him in opinion as to the expediency of admitting them under present circumstances, but I do not arrogate to myself any superiority of judgment.

Mr. BUTLER. If the honorable Senator will permit me to make an explanation—

Mr. BADGER. Certainly, sir; certainly.

Mr. BUTLER. I intimated nothing to the President. I merely said that I thought that his course of policy was rather unfortunate in its results.

Mr. BADGER. I am glad to hear this explanation—very glad, indeed.

Mr. FOOTE. If the honorable Senator will allow me—

Mr. BADGER. Certainly.

Mr. FOOTE. The honorable Senator has spoken a great deal about precedents. He is known to be strongly in favor of following precedents—more so perhaps, than any other member of the Senate. He has stated that in his opinion the President of the United States did not interfere improperly in the question of the State Government of California; and I should like to have him tell me if he ever met with a precedent like this. He has made the confession that the President of the United States, did do something, and I think he will find himself much at a loss to justify the course of the President.

Mr. BADGER. I do not make any confession with regard to the President. I know no more of what the President has done than the honorable Senator from Mississippi knows. All the information I have is contained in the President's message and the papers accompanying it, called for and promptly communicated; and I am sure that he told the truth the whole truth. With regard to the precedents, I speak of those which would govern in matters of legislation, with which I am concerned in the halls of Congress. I do not undertake to judge for the President of the United States what might be the proper course for him to pursue in the extraordinary circumstances in which the country is placed, and which have no precedent in history. But what I meant to say was that the President, in what he did, was actuated by high, patriotic motives, and did nothing, directly or indirectly, to control or influence the convention of California.

I desire, Mr. President, to keep this subject entirely clear from the topics that may embarrass the just exercise of our judgment and understanding. And I take this occasion to say that if the objections which I have stated did not exist or can be removed, and if other objections which I had to the early admission of these Territories into the Union, independently of those I have stated, and

which I had when the treaty was ratified, which I felt then strongly, and have continued to feel since, were removed, I should not feel myself at liberty to govern my vote for the admission of that State by any consideration as to the form of government they have adopted. I fully recognize that when any people, properly assembling under the laws of the United States, form a constitution and government for themselves, they are the only authority on earth which has a right to determine the particular mode in which the internal affairs of the new State shall be administered. Congress may, and, indeed, is bound to require that the constitution be republican. This is the only authority of supervision, the only restriction upon the full authority of the State; that she shall not introduce into her system any monarchical or aristocratic elements, which are unbecoming with our institutions, and might disturb the harmonious operation of the Government. I have stated the difficulties that have pressed upon my mind. I accord fully with the honorable Senator from Missouri (Mr. Benton) that this is a large subject, and that it should be fully and properly considered, and with the honorable Senator from South Carolina (Mr. Butler) that we should all make known whatever objections, or difficulties, or opinions we have. And I assure honorable Senators that, so far as I have stated my difficulties, I have stated them frankly, open to truth, and shall willingly receive and act upon any information or argument which may expose my errors, if in error I have fallen.

Mr. WEBSTER. I do not propose at present to go into any extended remarks upon this profoundly important matter. My purpose mainly is to concur in the sentiments of the honorable member from Missouri and the honorable member from South Carolina in the propriety of giving to this subject, under this motion—and it may as well be done under this motion as under any other—a cool, calm, and deliberate consideration and discussion in Senate. It is a question that agitates the whole country. It is a question in which all portions of the country take a very deep interest; and, so far as I am concerned, it is a question that will receive from me a dispassionate, cool, calm, and thorough examination. I do not mean to say that I shall myself give it a thorough examination; I can only promise that, for myself, I mean to consider it calmly, deliberately, and with a comprehensive regard, as far as I am able, to the nature and interests of the whole country. I think, sir, that it was a very appropriate suggestion on the part of the honorable member from Missouri, who, in particular, is now under consideration, that the motion should take the ordinary and deliberate course of discussion in the Senate which its great importance demands, and that every member of the Senate shall have an opportunity to deliberate upon it, and to express his opinion, the result of such deliberation. I do not wish to intimate any purpose of immediately addressing the Senate; perhaps I may do so in the further progress of the question. And I take occasion, since I am up, to say that I am exceedingly gratified with the fairness and candor with which my friend, the honorable member from North Carolina, has expressed himself upon this subject. He has stated the difficulties which he thinks deserve the consideration of the Senate, but which he does not undertake to say are absolutely insuperable, and therefore he holds himself with an open and candid mind to receive and consider any answer that may be given. This is fair, manly, patriotic. I agree that there are difficulties. I agree that the case is without any exact precedent in the legislation of this country; and I hope, that, if I may not, others may be able to satisfy my friend that those difficulties are not altogether insuperable; feeling that it is our duty on this occasion to consider the case as a case that is without precise precedent, and to apply to it the clearest analogies, the closest resemblances, and the best settled principles of action in the practice of government as well as we may be able.

In that spirit, sir, it will be, if I say anything at all, that I shall say it. And for the present I shall answer my purpose by saying that I concur entirely in the course suggested by the two honorable gentlemen on the other side of the chamber, to whom I have alluded, and in the opinion that it would be proper, and just, and reasonable that this motion should be postponed to some immediate decision, but that every member of the Senate should have time and opportunity afforded him to offer such argument as he may deem proper to offer on the general subject.

North Carolina Rail Road.

The undersigned, General Commissioners, appointed by the Act of the General Assembly, entitled an Act to incorporate the North Carolina Railroad Company, ratified the 27th day of January, 1849, having been informed that, at a Convention of the subscribers for stock in the said Company recently held at Hillsborough, it was ascertained that the sum of One Million of Dollars, the complement of stock required for the organization of said Company, had been taken; but that the manner of making subscriptions has not been uniform, nor in strict compliance with the Charter, do, by virtue of the powers conferred on them by the Act of Assembly aforesaid, hereby request and direct that the Books of subscription for stock in the said Company be again opened at the several places, and by the local Commissioners, (or any three of them,) at each place named in the said Act; and by Caleb G. Nye, James N. Fuller and Dr. James E. Williamson at Yanceyville, in Caswell County; by Giles Mebane, Benjamin Trolinger, and Edwin M. Holt, at Graham, in Alamance County; and by Richard A. Britton, John W. Syme, and A. G. McIlwaine, in the town of Petersburg, Virginia, on the 8th day of March next, or as soon thereafter as practicable, to receive subscriptions of the stock aforesaid, and the payment of Five dollars per share thereon, as prescribed in the said Charter, and that the same be kept open until the 23d of the same month; and for the sake of regularity and uniformity, it is recommended that the local Commissioners aforesaid do adopt the following, or a like, form of agreement, to be signed by the subscribers, to wit:

The North Carolina Rail Road.

"According to the provisions of the Act of the General Assembly, entitled 'An Act to incorporate the North Carolina Railroad Company,' the subscribers do hereby severally promise and agree, and with the said Company, to take the number of shares in the stock of the same affixed to their names respectively.

NAMES. | No. SHARES. | \$

And that in every instance the subscribers, or their authorized agents, shall write their names on said Books, in their respective counties or neighborhoods, and at the same time pay to the said local Commissioners Five dollars per share on each share by them subscribed.

The list of subscribers, who agreed to take the residue of the said stock, after deducting the positive subscription (provided one hundred such could be procured,) having been fully completed, and the rateable part of each of the said subscribers having been fixed by the said Convention at the sum of eight thousand dollars (\$8,000); the said hundred subscribers, or their agents, are severally requested to enter them on the Books as absolute subscribers of \$8,000 each, and to pay upon them the first installment of five per cent, as on other shares.

And the General Commissioners aforesaid do moreover give notice, that they will meet in the town of Greensborough, on the 30th day of March next, in further execution of the powers and duties devolved on them by said Act of Assembly, and they do hereby respectfully call on, and require all persons empowered to receive subscriptions of stock in the said Company, to make return of their Books of subscription, and to pay over the sums of money received thereon to them, or to their Treasurer, George W. Mordecai, Esq., at the time and place last above stated. It is desirable, whenever it may be convenient, that the moneys thus received may be deposited in some one of the Banks in the State, and that certificates of deposit, or drafts for the same, may be transmitted to the Treasurer aforesaid, with the Books of subscription, at or before the said meeting of the General Commissioners.

The utmost diligence and punctuality is hoped for on the part of all concerned in any of the proceedings aforesaid; so that the subscription Books being complete, and five per cent, being paid in by the 30th day of March next, as aforesaid, the General Meeting of the Stockholders at Salisbury may be called at an early day thereafter, for the election of Directors of the Company, and the commencement of operations on the Road.

(Signed)

JOSEPH H. WILSON,
WILLIAM C. MEANS,
JOHN B. LORD,
RICHARD WASHINGTON,
GEORGE W. MORDECAI,
HENRY B. ELLIOT,
JAMES M. LEACH,
JOHN M. MOREHEAD,
WILLIAM A. GRAHAM,
NATHAN A. STEADMAN,
EDWARD B. DUDLEY,
ALONZO P. JERKINS,
SAMUEL P. HARGRAVE,
ARCHIBALD G. CARTER.

February 29th, 1850.